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6 **UNITED STATES BANKRUPTCY COURT**7 **DISTRICT OF NEVADA**

8 In re: Case No. BK-S-18-12662-LEB
 9 MEDIZONE INTERNATIONAL, INC., Chapter 7

10 Debtor.

11 **DECLARATION OF LENARD
 12 SCHWARTZER SUPPORTING
 13 MOTION FOR APPROVAL OF
 14 BID PROCEDURES AND TO APPROVE
 15 SALE OF ESTATE PROPERTY
 FREE AND CLEAR OF ANY INTEREST**

16 Hearing Date: (OST Pending)
 17 Hearing Time: (OST Pending)

18 I, LENARD E. SCHWARTZER, do declare the following under penalty of perjury:

19 1. I am over the age of eighteen and I am competent to make this Declaration. I have
 20 personal knowledge of the facts in this matter, except where stated upon information and belief.

21 2. I am the duly appointed Chapter 7 Panel Trustee for the bankruptcy estate of Medizone
 22 International, Inc., and I make this Declaration in support of my *Motion for Approval of Bid
 23 Procedures and to Approve Sale of Estate Property Free and Clear of Any Interest* (the “Motion”).

24 3. I am seeking authorization to sell substantially all of the assets of the bankruptcy
 25 estate, including but not limited to inventory, intellectual property, personal property, and goodwill,
 26 pursuant to 11 U.S.C. §363 and the terms set forth with more particularity in the *Purchase and Sale
 27 Agreement* attached to the Motion as **Exhibit “1.”** The assets will be sold “as is,” without warranty,
 28 and free and clear of any liens, claims or encumbrances, and the sale expressly excludes any avoidance
 and recovery claims I may pursue pursuant to Chapter 5 of the Bankruptcy Code. The proposed
 buyers, EDWIN G. MARSHALL and JILL C. MARSHALL, N.M.D (collectively the “Marshalls” or

1 "Buyers") have offered to pay \$500,000.00 cash upon closing to purchase the assets, **subject to**
 2 **overbids.**

3 4. I am requesting that the Court approve bid procedures and set a separate hearing (no
 4 less than fourteen days after oral approval of this Motion by the Court) to conduct the auction, to
 5 confirm the results of the auction, and for final approval of the sale.

6 5. I recommend selling the assets pursuant to the proposed terms **or for such higher**
 7 **qualified bid as the Trustee may receive pursuant to the proposed bid procedures.**

8 6. On April 18, 2018, creditors Edwin G. Marshall and Dr. Jill C. Marshall (collectively,
 9 the "Marshalls"), and creditors Ushio America, Inc., and Engineering CPR, Inc. (together with the
 10 Marshalls, the "Petitioning Creditors"), filed an involuntary petition under Chapter 11 the Bankruptcy
 11 Code against Debtor MEDIZONE INTERNATIONAL, INC. (the "Debtor") in Reno, Nevada, thereby
 12 commencing bankruptcy case number 18-50412-GWZ (the "Involuntary Chapter 11 Case").

13 7. On May 8, 2018, the Debtor filed its petition pursuant to Chapter 7 of the Bankruptcy
 14 Code in Las Vegas, Nevada, and I was appointed to administer the Chapter 7 estate. I have been
 15 granted authorization to operate the business for approximately 90 days from June 1, 2018 through
 16 August 31, 2018 [ECF No. 36], and has been authorized to borrow up to \$200,000.00 from the
 17 Marshalls to fund said operation [ECF No. 40 and 53].

18 8. I have been contacted by the Marshalls based on their interest in purchasing
 19 substantially all of the assets of the bankruptcy estate. The terms of the sale are set forth with more
 20 particularity in the *Purchase and Sale Agreement* (the "Sale Agreement") attached to the Motion as
 21 **Exhibit "1."** The assets to be sold include all assets used for the operation of Debtor's business,
 22 including but not limited to the intellectual property, real property, fixtures, tangible and intangible
 23 personal property, inventory, goodwill, and other assets of the business (the "Assets").

24 9. The sale does not, however, include the sale or transfer of any avoidance claims or
 25 causes of action arising from the provisions of Sections 542 through 553 of the Bankruptcy Code
 26 (collectively, the "Avoidance Claims"). Any and all Avoidance Claims are excluded from the Assets
 27 to be sold and will be retained by me.

28 10. The proposed purchase price is \$500,000.00 cash, **subject to higher bid.** I propose

1 selling these assets "as is," "where is," and without warranty of title except to warrant that I have not
 2 previously disposed of the bankruptcy estate's interest in the Assets.

3 11. I am not aware of any secured claims against the Debtor's assets, and none have been
 4 disclosed in Debtor's schedules [ECF No. 1], except for the post-petition operational loan from the
 5 Marshalls, not to exceed \$200,000.00, that is secured by a super-priority claim and senior-most lien on
 6 the Assets [ECF No. 53].

7 12. I believe that the proposed sale terms are fair and reasonable, but recommend accepting
 8 higher qualified bids (with all terms other than the purchase price remaining the same) pursuant to the
 9 following bidding procedures (the "Bid Procedures"):

- 10 a. Any overbid incorporates all other terms of the Purchase Agreement (except as
 11 to purchase price), including without limitation the absence of any financing or
 12 due diligence contingency;
- 13 b. Any overbid must be accompanied by a good-faith cash deposit in an amount
 14 no less than \$100,000.00, delivered to the Trustee by certified funds no less
 15 than three (3) business days prior to the auction; and
- 16 c. Any overbid must offer a cash purchase price that is at least \$575,000.00, and
 17 is at least \$35,000 greater than any preceding overbid accepted by Trustee; and
- 18 d. The Marshalls have the right to match any overbid accepted by the Trustee as
 19 to purchase price, upon the same terms as the Purchase Agreement in all other
 20 respects, in which event the Marshalls shall become the accepted bidder,
 21 subject to further overbids; and
- 22 e. In the event that the Assets are sold to a purchaser other than the Marshalls, the
 23 Trustee shall pay the Marshalls a breakup fee in the amount of \$35,000.00, at
 24 the close of such sale from the sales proceeds; and
- 25 f. The Trustee shall obtain Bankruptcy Court approval of an overbid/auction
 26 process that includes each of the foregoing terms, including without limitation
 27 the Marshalls' right to the breakup fee, prior to such overbids and auction
 28 occurring.

1 g. In the event any party intends to overbid, the Trustee proposes that said auction
2 be conducted in open court and under the supervision of the Bankruptcy Court,
3 and that the second highest bidder, if consenting, be designated as the backup
4 bidder.

5 13. Toward that end, I request that this Court also set a separate hearing (the “Sale
6 Hearing”) after the Court’s approval of the proposed terms and bid procedures set forth in this Motion
7 for the purpose of conducting auction, to confirm the results, and for final approval of the sale.

8 14. I believe the proposed sale of the Assets on these terms is justified, and in my business
9 judgment I have concluded the proposed sale is the most beneficial to the estate.

10 15. My negotiations with the Marshalls have been made in good faith and there are no side
11 agreements. I believe that the sale price and other terms for the sale of the Assets represent the best
12 terms available for the sale of the Assets, but the Court should still take higher qualifying bids
13 pursuant to the proposed Bid Procedure.

14 16. I will file a Report of Sale with this Court when the proposed sale to the Buyer, or a
15 higher qualified bidder, is completed. No further confirmation of sale will be sought.

16 17. I have undertaken extensive discussions with interested parties and interested buyers
17 and concluded that the proposed sale of the Assets as proposed herein provides the best opportunity for
18 a recovery by creditors. If a sale is not approved, I anticipate liquidation of the Debtor’s assets will
19 result in substantially less benefit.

20 18. I have concluded that adoption of the Bid Procedures will provide interested parties
21 with the opportunity to present bids for the Assets and will facilitate the solicitation, submission and
22 evaluation of qualified bids for the Assets by me and the Court. The Bid Procedures have been
23 designed to maximize the value of the sale for the estate and creditors. The Bid Procedures expressly
24 state the amount of initial overbid (no less than \$575,000.00) and minimum bid increments
25 (\$35,000.00), and the method and deadlines for interested parties to timely qualify to bid. The terms
26 are intended to maximize the purchase price for the estate and balanced to avoid chilling the bids.

27 19. I propose that the Marshalls be the stalking horse bidder for the sale of the Assets. As
28 set forth in the bid procedures and the attached Purchase Agreement, in the event the Marshalls are not

1 the winning bidder the Marshalls will be paid a break-up fee of \$35,000.00 (7% of the stalking horse
2 purchase price). This breakup fee was negotiated with the Marshalls and reflects the reasonable
3 expense and risk incurred by the Marshalls taking the lead in connection with the proposed sale. I
4 have determined this condition is an appropriate term of the proposed sale and will not chill bidding.

5 20. The Assets are not subject to any known secured claims except for the loan extended
6 post-petition by the Marshalls for temporary operation of the business [ECF No. 53]. I have no
7 objection to the Marshall's secured claim, and more importantly the Marshalls have indicated they
8 fully support and consent to the proposed sale.

9 21. I have concluded that the proposed sale price and other terms for the sale of the Assets
10 represent the best terms available for the sale of the Assets.

11 22. I have been informed that Edwin G. Marshall was former Chairman and Chief
12 Executive Officer for more than a decade, and Mrs. Marshall was the former Director of Operations
13 for the company, and both became creditors following their separation from the company. I have been
14 advised that neither of the Marshalls, however, have been a director or officer of the company, or
15 involved in any respect in the management or operation of the company, for more than 18 months.

16 23. Negotiations have been at all times conducted at arms' length and in good faith, and
17 there are no side agreements, arrangements, or understandings with the Marshalls or any other parties
18 except as disclosed in this Motion, and no consideration is being paid for the Assets or in connection
19 with the proposed sale other than as set forth in this Motion, so I believe the terms of the sale
20 accomplish the appropriate objectives.

21 24. I am also requesting that any order approving the sale be effective immediately upon
22 confirmation of the sale by auction because the value of the inventory is diminishing and the proposed
23 sale may otherwise be lost.

24 Dated: June 28, 2018.

Lenard E. Schwartzer